

201306708
Orlando Phillip

After midnight on July 9, 2013, 22 year-old Rebecca Gordon was in a dispute with a car service driver over the quoted price of her fare. At some point, the driver took the woman's cell phone; the dispute escalated and the driver took them both to the 69th Precinct.

Sergeant Orlando Phillip and another officer came out to the car. After hearing from both parties, the officers told Ms. Gordon, who by all accounts was agitated, to pay the fare. She claimed later that she said she would pay if her phone was returned; the officers claimed that she simply refused to pay. In any event, the officers arrested Ms. Gordon.

While the parties dispute whether Ms. Gordon stepped out of the car on her own or was forced out, there was no dispute that she was in the precinct in handcuffs a few minutes later when one of her hands came out of a cuff. She stated that her hand had slipped out as she was talking and gesticulating with her arm and the cuffs were loose, and the officers stated that she was attempting to free herself.

In any event, once a hand was out of the cuffs, Ms. Gordon was pulled to the ground by an officer. While she was pinned to the ground by one officer, Sergeant Phillips approached with a Taser, stated (according to Ms. Gordon) "this bitch," and used the Taser on her lower back. She was then handcuffed more tightly and placed in a cell. She was released the next morning with no charges.

In his CCRB interview, Sergeant Phillip acknowledged that he had a Taser in his hand when he approached Ms. Gordon on the floor, but denied using it, saying he "did not believe" he had used a Taser on her. Ms. Gordon provided photographs of her lower back showing the marks of a Taser, and the other officers present confirmed that Sergeant Phillips used a Taser. Every time a Taser is used, the officer using it must fill out a report. The CCRB confirmed that Sergeant Phillips had not filled out a report for this incident or any other.

The CCRB found that Sergeant Phillip acted improperly when he cursed at Ms. Gordon and used the Taser on her, and that he made a false statement when he claimed not to have used the Taser.

When he was subsequently tried at the Administrative Prosecution Unit, he again claimed that "I know I had the Taser in my hand. I can't remember if it went off. I don't recall." The Administrative Law Judge, Rosemarie Maldonado stated that she was "especially troubled" by this "disturbingly equivocal description," and that his testimony "defies belief."

After ALJ Maldonado found Sergeant Phillip guilty, the NYPD penalized him by forcing him to forfeit 15 vacation days. He has since been assigned to the NYPD's Critical Response Group.

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Andrew Guinan	Team: Team # 4	CCRB Case #: 201306708	<input checked="" type="checkbox"/> Force <input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S. <input checked="" type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Tue, 07/09/2013 4:10 AM	Location of Incident: [REDACTED]		Precinct: 69	18 Mo. SOL 01/09/2015	EO SOL 1/9/2015
Date/Time CV Reported Wed, 07/24/2013 12:54 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 07/24/2013 12:54 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. SGT Orlando Phillip	01899	§ 87(2)(b)	069 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Lawrence Desilva	03878	§ 87(2)(b)	069 PCT
2. POM Evens Pierrelouis	08055	§ 87(2)(b)	069 PCT
3. POM Steven Mercedes	24883	§ 87(2)(b)	PSA 1
4. POM Louis Nunes	13031	§ 87(2)(b)	069 PCT
5. PAA Gail Pryor		§ 87(2)(b)	069 PCT

Officer(s)	Allegation	Investigator Recommendation
A . SGT Orlando Phillip	Force: Sgt. Orlando Phillip used physical force against § 87(2)(b).	A . § 87(2)(g) [REDACTED]
B . SGT Orlando Phillip	Off. Language: Sgt. Orlando Phillip made remarks to § 87(2)(b) based upon gender.	B . § 87(2)(g) [REDACTED]
C . SGT Orlando Phillip	Force: Sgt. Orlando Phillip tasered § 87(2)(b).	C . § 87(2)(g) [REDACTED]
D . SGT Orlando Phillip	Abuse of Authority: Sgt. Orlando Phillip did not obtain medical treatment for § 87(2)(b).	D . § 87(2)(g) [REDACTED]
§ 87(4-b), § 87(2)(g)		
F . SGT Orlando Phillip	Other: Sgt. Orlando Phillip provided a false official statement to the CCRB in violation of Patrol Guide procedure 203-08.	F . § 87(2)(g) [REDACTED]

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the online website on July 24, 2013. On July 9, 2013, § 87(2)(b) was arrested inside of the 69th Precinct stationhouse, located at 9720 Foster Avenue in Brooklyn, after refusing to pay her taxi fare. The following allegations resulted from § 87(2)(b)'s contact with officers.

- **Allegation A) Force: Sgt. Orlando Phillip used physical force against § 87(2)(b)**
§ 87(2)(g)
[REDACTED]
[REDACTED]
- **Allegation B) Offensive Language: Sgt. Orlando Phillip made remarks to § 87(2)(b) based upon gender.**
§ 87(2)(g)
[REDACTED]
[REDACTED]
- **Allegation C) Force: Sgt. Orlando Phillip tasered § 87(2)(b)**
- **Allegation D) Abuse of Authority: Sgt. Orlando Phillip did obtain medical treatment for § 87(2)(b)**
§ 87(4-b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
- **Allegation F) Other Misconduct: Sgt. Orlando Phillip provided a false official statement to the CCRB in violation of Patrol Guide procedure 203-08.**
§ 87(2)(g)
[REDACTED]
[REDACTED]

Results of Investigation

Civilian Statements

- Complainant/Victim:** § 87(2)(b)
- § 87(2)(b)
[REDACTED]
[REDACTED]

Statements to Medical Personnel

§ 87(2)(b) was treated in the § 87(2)(b) emergency department on § 87(2)(b). She complained of left-sided back pain, left-sided forehead pain, and pain to both wrists. She stated to § 87(2)(b) (encl. E1 and Medical Records) that she was hit with a knee in the forehead while being arrested, and was simultaneously tased on the left side of her back.

Photographs of Injuries

§ 87(2)(b) submitted seven photos (encl. C16 - C22) of injuries she sustained on the night of the

incident. All photographs were taken in her aunt's house, located at § 87(2)(b) in Queens. Photographs 1 and 3 through 7 were taken by § 87(2)(b) on July 9, 2013. Photo 2 was taken by a friend, one to two days after the incident. § 87(2)(b) described these images in a phone statement provided to the CCRB on August 27, 2013.

Photo 1: This is an image of § 87(2)(b)'s lower left back, with two cross-shaped abrasions, approximately 2 inches apart. There is also a third, small, circular abrasion, located equidistant from the two main wounds and approximately 2.5 inches below them. There is dark bruising around the entire area encompassing the three wounds. § 87(2)(b) stated that this was where a taser was applied to her back.

Photo 2: This is an image of the same area documented in photo 1. The wounds have partially healed, and appear to consist mainly of redness and swelling.

Photo 3: This is an image of a scratch to § 87(2)(b)'s upper left bicep, with possibly a second scratch in the middle of the muscle. § 87(2)(b) described this injury as a bruise, and stated that she may have sustained it while being held by the upper arm.

Photo 4: This is a photo of the back of § 87(2)(b)'s right wrist, showing three healed lacerations. § 87(2)(b) stated that these scratches were the result of her handcuffs being tightened.

Photo 5: This is another image of § 87(2)(b)'s left arm. In addition to the scratches noted in Photo 3, there is a red and purple bruise to § 87(2)(b)'s left forearm. § 87(2)(b) stated that this injury may have been sustained while she was being held to the car or to the ground.

Photo 6: This is an image of § 87(2)(b)'s face, with no visible injuries. § 87(2)(b) stated that there is a small cut to the right portion of her upper lip, below her nose. She additionally reported bruising under her right eye, as well as a small scratch immediately above and to the right of her right eyebrow. Finally, § 87(2)(b) reported a knot on her forehead above her left eyebrow.

Photo 7: This is an image of § 87(2)(b)'s left hand, with a small circular bruise between the knuckles of her index and middle fingers. § 87(2)(b) stated that this injury may have been sustained while on the ground.

CCRB Statement

§ 87(2)(b) was interviewed at the CCRB (encl. C8 – C10) on August 14, 2013. She provided a phone statement on July 26, 2013 (encl. C7), and a follow-up phone statement on August 27, 2013 (encl. C24). § 87(2)(g)

On July 9, 2013, at approximately 4:00 a.m., § 87(2)(b) was taking a private livery service to her home, from a party. She had consumed two alcoholic drinks beginning at approximately 8:00 p.m. on July 8, 2013, while eating dinner. She was tired because of the late hour, and alcohol she had consumed, but she was lucid, not intoxicated, and her speech was not slurred. After stopping at an ATM, § 87(2)(b) had a dispute with the taxi driver, known to the CCRB as § 87(2)(b). § 87(2)(b) over the fare. § 87(2)(b) screamed and became aggressive, calling § 87(2)(b) a liar. § 87(2)(b) spoke in a calm tone throughout the argument. While § 87(2)(b) was on the phone with the dispatcher, § 87(2)(b) reached back through the glass divide and took the phone from § 87(2)(b)'s hand. § 87(2)(b) began yelling, and replied that she would not pay until she

received her phone back. § 87(2)(b) stated, "We can go to the precinct."

When the taxi arrived at the 69th Precinct stationhouse, § 87(2)(b) observed an officer, whom she identified by the name on his nameplate as Sgt. Orlando Phillip of the 69th Precinct, standing outside the stationhouse. § 87(2)(b) described Sgt. Phillip as a brown-skinned, bald male in uniform, who was substantially taller than her. Sgt. Phillip approached the vehicle, and asked § 87(2)(b) to step out. As Sgt. Phillip conversed with him, an officer, whom § 87(2)(b) identified as PO Lawrence Desilva of the 69th Precinct, approached the vehicle. She described PO Desilva as a young male with glasses, standing 5'7" tall in uniform. § 87(2)(b) began speaking to PO Desilva, who instructed her to calm down and remain in the vehicle. However, § 87(2)(b) continued to explain her story. Sgt. Phillip returned to the vehicle, and instructed § 87(2)(b) to pay the stated fare. § 87(2)(b) continued to explain what had occurred prior to her arrival at the precinct. The officers continued to instruct her to pay the driver, while § 87(2)(b) replied that he had taken her phone. Finally, one of the officers asked her, "Are you going to pay him?" § 87(2)(b) refused, and an officer instructed her to step out of the vehicle. At no point while speaking to the officers did § 87(2)(b) yell, or use profanity.

§ 87(2)(b) stepped out of the taxi without assistance. An officer grabbed her, turned her around, and pushed her against the taxi. § 87(2)(b) was unable to determine whether Sgt. Phillip or PO Desilva pushed her against the vehicle. An officer, likely PO Desilva, then brought § 87(2)(b)'s hands behind her back, placed her in handcuffs, and led her forcefully into the stationhouse, pushing her as she walked.

§ 87(2)(b) was brought before the desk. PO Desilva stood to her side, holding her arm, as Sgt. Phillip walked behind the desk. There were no additional officers behind the desk at the time § 87(2)(b) entered the precinct, however she stated that there may have been a male officer, standing opposite the desk. § 87(2)(b) was yelling as she spoke. She then removed one hand from a loose handcuff, and began to gesture with her hand as she spoke. PO Desilva immediately pulled § 87(2)(b) backwards and to the ground. § 87(2)(b) did not resist being pulled to the ground. She landed on her back and side, with her free hand twisted underneath her. She did not strike her head when she fell. § 87(2)(b) moved her arm in an attempt to free it from underneath her. She felt PO Desilva, and possibly one other officer pushing her to the ground. She then observed Sgt. Phillip walk around from behind the desk with a taser in his hand, yelling "This bitch." Sgt. Phillip touched § 87(2)(b)'s back with the body of the taser, and discharged it into her. On August 27, 2013, § 87(2)(b) stated that no darts were released when the taser was discharged. § 87(2)(b) felt a shock, but continued to move. § 87(2)(b) was finally turned with her face to the floor, at which point, two officers, including Sgt. Phillip, lifted her upper torso. Sgt. Phillip then kneed her in the face three times from standing height, causing bruising to her lip and nose, as well as swelling and bruising to her forehead. § 87(2)(b) identified Sgt. Phillip as the officer who kneed her by tracking his position until the point she was struck. Handcuffs were then placed tightly on § 87(2)(b) causing cuts to her wrists.

§ 87(2)(b) was transferred to a cell, where a black female officer frisked her. At approximately 7:00 a.m., PO Desilva came to process § 87(2)(b)'s arrest. § 87(2)(b) stated that it had been unnecessary for Sgt. Phillip to use profanity towards her and taser her. PO Desilva did not respond. § 87(2)(b) stated that PO Desilva offered her medical treatment, which she refused. § 87(2)(b) was subsequently released from the stationhouse, after a white male officer in a white shirt stated that her charges had been voided by the district attorney. § 87(2)(b) was treated at § 87(2)(b). On § 87(2)(b), § 87(2)(b)

stated that she complained of pain in her head and back, and informed the doctor at § 87(2)(b) [REDACTED] that she had been tasered and kneed in the head. The doctor made no specific mention of a taser injury, and refused to photograph her back.

50H Hearing and Deposition

§ 87(2)(b), § 87(2)(a) Gen. Mun., § 50-H(3)

Witness: § 87(2)(b)

- § 87(2)(b)

CCRB Statement

§ 87(2)(b) was interviewed at § 87(2)(b) in Brooklyn (encl. C25 – C29) on October 21, 2013. § 87(2)(g)

On the date of the incident, § 87(2)(b) picked up § 87(2)(b) and drove her to her destination without incident. When they arrived, § 87(2)(b) and § 87(2)(b) had a verbal dispute over the fare. § 87(2)(b) detected the odor of alcohol on § 87(2)(b)'s breath. § 87(2)(b) became agitated, and refused to pay § 87(2)(b) once attempted to exit the vehicle without paying, at which point, § 87(2)(b) took her phone from the back seat. § 87(2)(b) stepped back into the vehicle and screamed, "Give me my fucking phone." She then seized the hand microphone on § 87(2)(b)'s radio. § 87(2)(b) stated, "We're going to the precinct." On the way, § 87(2)(b) struck § 87(2)(b) on the back of the head numerous times with the microphone, and bit him hard on his elbow. § 87(2)(b) retrieved his microphone, but § 87(2)(b) tugged forcefully on the cord, causing the microphone to come out of § 87(2)(b)'s hand and strike her in

the face. § 87(2)(b) stated that § 87(2)(b)'s lip appeared to be red as a result of this strike.

When § 87(2)(b) pulled up at the precinct, Sgt. Phillip approached the vehicle. § 87(2)(b) was still screaming and holding onto § 87(2)(b)'s shirt. Sgt. Phillip instructed § 87(2)(b) to come to the other side of the vehicle. PO Lawrence Desilva and PO Steven Mercedes emerged from the precinct. PO Desilva asked § 87(2)(b) how much the ride cost, then approached § 87(2)(b) in the vehicle and asked her what happened. PO Desilva called the taxi dispatcher, who quoted the same fare as § 87(2)(b). PO Desilva told § 87(2)(b) that she could leave if she paid the fare. § 87(2)(b) was loud and cursing, and refused to pay. The officers instructed § 87(2)(b) to be calm, and asked her to pay the fare approximately six times, without success. § 87(2)(b) stated that a third black male officer may have been present outside the stationhouse, but was unable to recall.

PO Desilva and Sgt. Phillip then asked § 87(2)(b) to exit the vehicle approximately six times. When she refused, an officer, likely Sgt. Phillip, opened the door. § 87(2)(b) began to kick her legs, flail her arms, and hold on to a handle above the door. Either PO Desilva or Sgt. Phillip took § 87(2)(b) by the arm. § 87(2)(b) began to kick, and swing her § 87(2)(b). PO Mercedes walked around to the other side of the vehicle and opened the door. Either Sgt. Phillip or PO Desilva held § 87(2)(b) by the arms and pulled, while PO Mercedes held § 87(2)(b) by the upper body and pushed her to remove her from the vehicle. The officers attempted to place § 87(2)(b) on the ground, but she landed in a seated position, and began to slide her body over the ground as the officers held her by the upper body. They attempted to turn her around and place her in handcuffs, but were unable to do so because of the movement of her body. The officers picked § 87(2)(b) up off the ground again. § 87(2)(b) continued to kick, and struck one of the officers with her foot, causing him to stumble backwards, but not to fall. § 87(2)(b) was unable to recall which officer was struck.

The officers placed § 87(2)(b) in handcuffs and walked her into the precinct, with one officer on each side. § 87(2)(b) actively resisted being brought into the stationhouse. § 87(2)(b) walked behind the officers. He observed one or two individuals in civilian clothing on the stoop of the precinct stationhouse. Inside the stationhouse, § 87(2)(b) became more agitated, and one of her hands escaped from the handcuffs. She began to swing the handcuff like a weapon, causing the officer holding her to duck out of the way. The officers then placed § 87(2)(b) on the ground again, and were eventually able to place her back in handcuffs. § 87(2)(b) was unable to articulate how § 87(2)(b) was placed on the ground. § 87(2)(b) did not observe any devices, including a taser, and stated that none was used to restrain § 87(2)(b). He stated that he did not observe an officer do anything aside from hold § 87(2)(b) carefully by the upper arms inside the stationhouse to restrain her. § 87(2)(b) did not complain of being shocked with electricity. At some point, § 87(2)(b) was asked to leave the precinct to move his car to allow an officer to move a vehicle. When he returned, § 87(2)(b) was still in the stationhouse, seated on a bench, screaming. § 87(2)(b) did not observe any further injuries to her face or arm. § 87(2)(b) was moved to a different portion of the stationhouse, and two female officers entered the stationhouse to speak with her. § 87(2)(b) was present and close to the struggles on the ground both inside and outside of the stationhouse.

NYPD Statements:

Subject Officer: SGT ORLANDO PHILLIP

- At the time of the incident, Sgt. Orlando Phillip was § 87(2)(b) -old. He is a black male, standing 6'1" tall, and weighing 215 pounds. He has black hair and brown eyes.
- On the day of the incident, Sgt. Phillip was assigned as the 69th Precinct desk sergeant without a specific partner. He was dressed in uniform, but was not assigned to a motor vehicle at any point throughout his tour. He worked from 12:00 a.m. until 8:00 a.m.

Memo Book

Sgt. Phillip's memo book (encl. D1 – D2) contains no entries regarding this incident. He was present for duty at the 69th Precinct stationhouse at 10:40 p.m. on July 8, 2013 and marked the end of his tour at 8:02 a.m. on July 9, 2013. He made no entries between these two times.

CCRB Statement

Sgt. Phillip was interviewed at the CCRB (encl. D3 – D5) on November 8, 2013. His statement is summarized as follows:

On the date of the incident, Sgt. Phillip was seated behind the desk in the 69th Precinct stationhouse when a livery cab driver, known to the CCRB as § 87(2)(b) ran into the stationhouse yelling for help. Sgt. Phillip went outside with PO Desilva, and found that § 87(2)(b) had a young girl, known to the CCRB as § 87(2)(b) in the cab. No officers aside from Sgt. Phillip and PO Desilva were outside the stationhouse. § 87(2)(b) had been engaged in a dispute with § 87(2)(b) who was refusing to pay her fare.

§ 87(2)(b) initially had a calm tone, but was obviously intoxicated. The odor of alcohol on § 87(2)(b)'s breath, as well as the unusual strength she later displayed, indicated to Sgt. Phillip that she was intoxicated. § 87(2)(b) was asked five to six times to pay the fare, and Sgt. Phillip warned § 87(2)(b) that she would be arrested if she did not. When § 87(2)(b) still refused to pay the fare, Sgt. Phillip stated to her, "Okay ma'm, you're under arrest." The officers opened the door to the vehicle, and asked § 87(2)(b) to step out. However, § 87(2)(b) refused, and as soon as the door to the cab opened, she began kicking and punching at the officers, and clinging to the vehicle. The officers asked § 87(2)(b) to exit the vehicle at least six times with no success. PO Desilva finally took hold of § 87(2)(b)'s hand and removed her from the cab. Sgt. Phillip was unable to recall exactly where PO Desilva grabbed § 87(2)(b) or how many hands he used to do so. § 87(2)(b) was moved directly from a seated position inside the vehicle, to the ground.

On the ground, the officers attempted to restrain § 87(2)(b) by pulling her hands behind her back. However, § 87(2)(b) refused to be handcuffed and "flopped" on the ground. The officers struggled with her for two to three minutes. Sgt. Phillip was unable to recall exactly where he took hold of § 87(2)(b) in order to control her. However, she was eventually handcuffed. Sgt. Phillip could not recall whether § 87(2)(b) was ever stood up outside the stationhouse and placed against the cab. PO Desilva walked her into the stationhouse without incident. Sgt. Phillip stated, however, that her demeanor did not change, and she did not calm down.

Only Sgt. Phillip and PO Desilva were present inside the lobby of the stationhouse. Sgt. Phillip did not recall observing any injuries to § 87(2)(b) when she entered the stationhouse. § 87(2)(b) was brought before the desk, and Sgt. Phillip walked behind it. He was unable to

describe § 87(2)(b)'s demeanor as she stood before the desk. PO Desilva stood in front of the desk with § 87(2)(b) suddenly slipped one hand out of a handcuff and punched PO Desilva in the face. PO Desilva threw § 87(2)(b) to the ground and attempted to restrain her, while Sgt. Phillip took the taser from the desk and ran around to the front of it. As Sgt. Phillip approached PO Desilva and § 87(2)(b), PO Desilva was on the ground with § 87(2)(b) attempting to control her. Sgt. Phillip did not recall if he made any statements regarding § 87(2)(b)'s demeanor as he came around the desk. He did not recall referring to her as a "bitch." With one hand holding the taser, and one hand holding § 87(2)(b) down, Sgt. Phillip attempted to assist PO Desilva in placing § 87(2)(b) in handcuffs. He then placed the taser back in his waistband and attempted to affect the arrest with both hands.

§ 87(2)(b) kicked and screamed at the officers for two to three minutes. Sgt. Phillip stated that to his recollection, he only used his hands to restrain § 87(2)(b) and did not use the taser. He did not specifically recall whether he used the taser. Sgt. Phillip stated that the struggle was chaotic, and he was unsure whether the taser touched § 87(2)(b)'s body. He did not believe he activated the taser at any point during the struggle. PO Desilva was on his knees beside § 87(2)(b). Sgt. Phillip did not recall whether he made contact with § 87(2)(b)'s head or face during the struggle. He doubted that he used his knee to strike her in the face, but did not recall. He could not recall whether his knee struck § 87(2)(b) in the face at any point. § 87(2)(b) was eventually placed in handcuffs and moved to a holding cell.

Sgt. Phillip was shown pictures of § 87(2)(b)'s left lower back. He did not recognize the abrasions or contusions shown in the photos, and stated he was unsure whether these injuries were characteristic of those caused by a taser. § 87(2)(b) did not complain of back pain while inside the stationhouse, and Sgt. Phillip was unsure of how § 87(2)(b) sustained injuries to her scalp and back. Sgt. Phillip did not recall whether § 87(2)(b) requested medical attention, but did not believe an ambulance arrived to treat her.

Sgt. Phillip stated that when a taser is used, a command log entry is made, and a non-lethal restraining device report is prepared. No such form was completed on the night of the incident, because he did not recall using a taser. Sgt. Phillip did not know whether there was a different reporting procedure for discharging a taser with darts, as opposed to performing a touch-stun. The choice of whether to perform a touch-stun falls to the supervisor's discretion, but Sgt. Phillip did not believe an individual "such as § 87(2)(b)" would merit such a use.

Witness Officer: PO LAWRENCE DESILVA

- At the time of the incident, PO Lawrence Desilva was § 87(2)(b)-old. He is a black male, standing 5'8" tall, and weighing 160 pounds. He has black hair and brown eyes.
- On the day of the incident, PO Desilva was assigned as the 69th Precinct telephone-switchboard operator with the desk sergeant, Sgt. Phillip. He was dressed in uniform, and was not assigned to a motor vehicle. He worked from 11:15 a.m. on July 8, 2013, until 7:50 a.m. on July 9, 2013.

Arrest Report

§ 87(2)(b), § 87(2)(a) CPL 160.50



§ 87(2)(b), § 87(2)(a) CPL 160.50

[REDACTED]

[REDACTED]

[REDACTED]

Complaint Report

§ 87(2)(b), § 87(2)(a) CPL 160.50

[REDACTED]

[REDACTED]

Memo Book

PO Desilva's memo book (encl. D6 – D9) contains the following entries regarding this incident: At 4:00 a.m., PO Desilva received a walk-in of a dispute between a cab driver and his passenger, § 87(2)(b). At 4:18 a.m., one arrest was made at the 69th Precinct stationhouse for § 87(2)(b), § 87(2)(a) CPL 160.50. § 87(2)(b) had stated she would not pay her cab fare, and then attacked the officer. PO Desilva and Sgt. Phillip used physical force to restrain § 87(2)(b) who was intoxicated. Sgt. Phillip used a taser. PO Desilva made additional entries regarding processing § 87(2)(b)'s arrest. § 87(2)(b) was released at 1:00 p.m. after an assistant district attorney declined to prosecute her.

CCRB Statement

PO Desilva was interviewed at the CCRB (encl. D13 – D16) on November 15, 2013. His statement is summarized as follows:

On the day of the incident, PO Desilva was inside the 69th Precinct stationhouse. Sgt. Phillip was standing outside the stationhouse when the driver of a taxi, known to the CCRB as § 87(2)(b) pulled up outside the stationhouse, arguing back and forth with his passenger, known to the CCRB as § 87(2)(b) over the correct fare. Sgt. Phillip called PO Desilva outside. PO Desilva approached the vehicle and asked § 87(2)(b) to step out. As they conversed, § 87(2)(b) was irate, and screaming at § 87(2)(b).

PO Desilva then walked to the vehicle to speak with § 87(2)(b). He then called the taxi dispatcher, who quoted the same amount as § 87(2)(b) had. PO Desilva instructed § 87(2)(b) to pay the fare. § 87(2)(b) refused requests to pay four to five times. § 87(2)(b) appeared to be intoxicated. PO Desilva smelled alcohol on her and stated that she was slurring her speech. Sgt. Phillip approached PO Desilva, and instructed him to arrest § 87(2)(b) if she refused to pay. A third officer, known to the CCRB as PO Steven Mercedes of PSA 1, stood to PO Desilva's left during his conversation with § 87(2)(b) but did not speak to her.

PO Desilva instructed § 87(2)(b) to pay the fare a final time or be arrested. When she refused, PO Desilva opened the door to the vehicle and asked § 87(2)(b) to step out. § 87(2)(b) refused, and continued to scream. After PO Desilva had asked § 87(2)(b) several times to step out, Sgt. Phillip instructed him to remove her from the vehicle. PO Desilva took hold of one of § 87(2)(b)'s arms, but she pulled it away. PO Desilva then took both of § 87(2)(b)'s arms in both of his hands and removed her from the vehicle. § 87(2)(b) resisted being removed from the vehicle by turning her back to the opposite side of the cab and using her legs to block PO Desilva from pulling her out, and kicking her legs out at him. Once outside the vehicle, § 87(2)(b) began to flail her arms to resist being handcuffed. PO Desilva leaned her against the vehicle and held her hands behind her back while PO Mercedes placed her in handcuffs. PO

Desilva then guided § 87(2)(b) inside the stationhouse.

Inside the stationhouse, § 87(2)(b) was brought before the desk, while Sgt. Phillip walked behind it and sat down. § 87(2)(b) followed the officers into the stationhouse and was seated on one of three chairs located outside a gate inside the main room, which separates the entrance of the stationhouse. There were no additional officers inside the main stationhouse room on the night of the incident. PO Desilva was standing on § 87(2)(b)'s right side, holding her right arm. § 87(2)(b) and Sgt. Phillip were arguing and raising their voices. He described § 87(2)(b) and Sgt. Phillip's demeanor as "very angry." PO Desilva looked down at § 87(2)(b)'s hands, and observed § 87(2)(b)'s right hand come out of the handcuff. § 87(2)(b) began to flail her arms as she had outside of the stationhouse, in an effort to avoid being handcuffed again. The right handcuff was still closed when § 87(2)(b)'s hand came out of it. PO Desilva attempted to grab § 87(2)(b)'s hand. He missed, however, and § 87(2)(b) swung her right hand towards PO Desilva's face. She did not make contact with him. PO Desilva was unsure whether § 87(2)(b) had intended to strike him.

PO Desilva then took § 87(2)(b) by both of her arms, and placed her face-down on the floor. PO Desilva held both of § 87(2)(b)'s arms all the way down to the ground, and she did not fall. § 87(2)(b) did not strike any part of her body against the floor as she was placed on the floor, and her chest was the first part of her body to make contact with the floor. To PO Desilva's knowledge, § 87(2)(b) did not strike her face on the floor. PO Desilva had not observed any injuries to § 87(2)(b) up until this point, including to her face. He attempted to hold her arms together to allow PO Mercedes to handcuff her.

On the floor, § 87(2)(b) continued to attempt to flail her arms and bring them in front of her body to prevent being handcuffed. PO Desilva and PO Mercedes held onto § 87(2)(b)'s arms to prevent this, but were still having difficulty bringing her arms together behind her back to handcuff her. § 87(2)(b) additionally rolled back and forth, moving her shoulders. She kicked her legs back, but PO Desilva did not believe this was an attempt to strike him or PO Mercedes. § 87(2)(b) remained with her face to the ground throughout the struggle. At this point, Sgt. Phillip came around the desk, knelt near § 87(2)(b)'s head, and punched her twice in the right cheek in quick succession with a closed fist. He gave no warning prior to striking her, and made no statements between the strikes. Sgt. Phillip's knee was close to § 87(2)(b)'s head when he struck her in the face. PO Desilva did not recall whether Sgt. Phillip used his knee to strike § 87(2)(b) in the forehead. § 87(2)(b) continued to cry and move her arms. Sgt. Phillip then stated, "You're a crazy bitch." PO Desilva instructed § 87(2)(b) multiple times to place her hands behind her back, but she did not comply.

Sgt. Phillip then reached behind the desk and removed a taser. He walked around to the back of § 87(2)(b) and tasered her one time in the back. The body of the taser made contact with § 87(2)(b)'s back when it was activated, and Sgt. Phillip was not standing at any distance from her when he discharged it. At no point were taser darts projected into § 87(2)(b)'s back. PO Desilva did not see Sgt. Phillip manipulate the taser or remove the cartridge from it prior to tasering § 87(2)(b). Sgt. Phillip gave § 87(2)(b) no warning before activating the taser. Prior to this, PO Desilva had been standing behind § 87(2)(b) nearly on top of her, holding both hands and looking down at her back. PO Mercedes was standing to PO Desilva's right, and was holding § 87(2)(b)'s right arm. PO Desilva moved to the side when Sgt. Phillip walked around § 87(2)(b) and was unable to see exactly where the taser made contact with her body. He was additionally unsure how long the taser was activated. He later stated it may have been for

between two and five seconds. § 87(2)(b) screamed and continued to cry and resist when the taser was activated. Eventually, PO Desilva stated to her, "All you have to do is put your hands behind your back."

Approximately one minute after the taser was activated, § 87(2)(b) relaxed her arms and allowed herself to be handcuffed. The entire struggle on the ground lasted approximately three minutes. When § 87(2)(b) had been handcuffed, PO Pierre-Louis exited the 124 Room, and assisted PO Desilva and PO Mercedes in lifting § 87(2)(b) from the ground. Sgt. Phillip walked back around the desk and took no further action. PO Desilva walked § 87(2)(b) to the cells.

PO Desilva saw swelling to § 87(2)(b)'s right cheek and right shoulder. He was unsure how § 87(2)(b) sustained the injury to her right shoulder. PO Desilva viewed photographs of abrasions and contusions to § 87(2)(b)'s lower left back. § 87(2)(b) showed PO Desilva her injuries, including the one to her back, and PO Desilva stated that the injury in Photograph 1 provided by § 87(2)(b) is consistent with that which he observed on the day of the incident. He was unaware, however, of how she sustained this injury, and stated that § 87(2)(b) did not complain of pain to her back. This injury may have been where the taser was applied, however, PO Desilva could not say for certain. PO Desilva viewed a photograph of abrasions to § 87(2)(b)'s right wrist. § 87(2)(b) told him about this injury, and the photograph was consistent with what he observed on the day of the incident. PO Desilva believed that this injury was caused by § 87(2)(b) pulling her right hand out of the handcuffs. PO Desilva did not recall observing an injury to § 87(2)(b)'s forehead, and stated that he did not recall how she could have sustained the scalp contusion documented in her medical records. § 87(2)(b) only complained of pain to her right cheek. PO Desilva offered § 87(2)(b) medical treatment, but she refused. § 87(2)(b) was released from the stationhouse at 1:00 p.m. on July 9, 2013, after an assistant district attorney declined to prosecute her.

Witness Officer: PO STEVEN MERCEDES

- *At the time of the incident, PO Steven Mercedes was § 87(2)(b)-old. He is a Hispanic male, standing 5'10" tall, and weighing 240 pounds. He has brown hair and brown eyes.*
- *On the day of the incident, PO Mercedes was assigned to PSA 1 sector HEI, with his partner, PO Lee. He was dressed in uniform, and assigned to marked RMP van number 9410. He worked from 6:00 p.m. on July 8, 2013 to 2:35 a.m. on July 9, 2013.*

Memo Book

PO Mercedes's memo book (encl. D22 – D24) contains the following entries regarding this incident: At 4:45 a.m., PO Mercedes assisted Sgt. Phillip and PO Desilva with an emergency assignment inside of the 69th Precinct stationhouse. He departed the 69th Precinct stationhouse at 6:00 a.m.

CCRB Statement

PO Mercedes was interviewed at the CCRB (encl. D25 – D27) on December 10, 2013. § 87(2)(b)

On the date of the incident, PO Mercedes was processing an arrest in the 69th Precinct stationhouse. He stepped outside momentarily, and observed a livery cab pull up to the stationhouse. PO Desilva approached the vehicle to speak with the driver, known to the CCRB as § 87(2)(b) and the passenger, known to the CCRB as § 87(2)(b). PO Mercedes was standing approximately ten to fifteen feet away. PO Mercedes initially stated that § 87(2)(b)

entered the stationhouse to file a complaint. PO Desilva spoke to both § 87(2)(b) and § 87(2)(b) who screamed and refused to pay her fare. At this point, PO Mercedes approached the vehicle to assist PO Desilva because he was alone. PO Mercedes also stated, however, that he was unsure whether Sgt. Phillip or PO Desilva was the first officer to approach the vehicle. The officers provided § 87(2)(b) with several opportunities to pay, but she refused.

Sgt. Phillip exited the stationhouse and approached § 87(2)(b) to speak with him. After learning that § 87(2)(b) was refusing to pay her cab fare, he approached to speak with her as well. PO Desilva instructed § 87(2)(b) to exit the vehicle, and she did so of her own volition. PO Desilva and Sgt. Phillip instructed § 87(2)(b) to place her hands behind her back, but she became irate and refused. Sgt. Phillip, PO Mercedes and PO Desilva took hold of § 87(2)(b)'s arms and attempted to place them behind her back. § 87(2)(b) resisted by pulling her arm away from PO Desilva and towards her body. Approximately two minutes later, PO Mercedes, PO Desilva and Sgt. Phillip were able to pull § 87(2)(b)'s arms behind her back and handcuff her. PO Mercedes held § 87(2)(b)'s arms while PO Desilva handcuffed her. At no point was § 87(2)(b) placed against a vehicle to be handcuffed, and at no point was she placed on the ground.

Inside the stationhouse, PO Mercedes was standing within three feet of § 87(2)(b) and PO Desilva. PO Mercedes believed that § 87(2)(b) struck PO Desilva when she freed her hands from the handcuffs, possibly with the dangling handcuff. § 87(2)(b) then went to the ground, landing in an unknown position. PO Mercedes observed her go to the ground but was unable to determine why. PO Mercedes and PO Desilva then each took one of § 87(2)(b)'s arms in an attempt to handcuff her hands behind her back. § 87(2)(b), however, landed on the ground with her arms tucked under her body, and refused to release them. § 87(2)(b) also resisted by kicking her feet, and struck PO Mercedes several times in the legs. PO Mercedes did not sustain any injuries as a result of these kicks. § 87(2)(b) did not exhibit any further types of resistance.

Sgt. Phillip came from behind the desk and assisted in apprehending § 87(2)(b). PO Mercedes believed that Sgt. Phillip used his hands to assist, but was unable to articulate specifically how the officers were able to handcuff § 87(2)(b) five minutes later. Sgt. Phillip did not retrieve or use any devices to restrain § 87(2)(b) including a taser. At no point did he or any officer strike § 87(2)(b) or refer to her as a "crazy bitch."

No officers emerged from the 124 room to assist. After § 87(2)(b) was lifted form the ground, PO Mercedes did not observe any injuries to her.

Witness Officer: PO EVENS PIERRE-LOUIS

- *At the time of the incident, PO Evens Pierre-Louis was § 87(2)(b)-old. He is a black male, standing 5'10" tall, and weighing 180 pounds. He has black hair and brown eyes.*
- *On the night of the incident, PO Pierre-Louis was assigned as the 69th Precinct telephone-switchboard operator and did not have a partner. He was dressed in uniform, and was not assigned to a motor vehicle. He worked from 11:15 p.m. on July 8, 2013, until 7:50 a.m. on July 9, 2013.*

Memo Book

PO Pierre-Louis's memo book (encl. D17 – D18) did not contain any entries regarding this incident. He assumed telephone-switchboard duty at 11:30 p.m. on July 8, 2013. He left his post at 4:00 a.m. on July 9, 2013 to voucher a wallet in the 124 room. He then performed cell-attendant duty at 4:45 a.m.

CCRB Statement

PO Pierre-Louis was interviewed at the CCRB (encl. D19 – D21) on December 9, 2013. § 87(2)(g)

At the time of the incident, PO Pierre-Louis was inside the 124 room inside of the 69th Precinct stationhouse. The 124 room has two doors leading to the main room of the stationhouse. Though the window in the front facing door was completely blocked by taped papers, he was able to hear noise coming from the main room of the stationhouse. At approximately 4:00 a.m., PO Pierre-Louis overheard a female, known to the CCRB as § 87(2)(b) yelling, “Don’t touch me,” from the main room of the stationhouse. He overheard PO Desilva state, “You have to get up off the floor.” After 30 seconds, PO Pierre-Louis entered the main room of the stationhouse. He did not overhear a taser being discharged from inside the 124 room.

PO Pierre-Louis observed § 87(2)(b) seated handcuffed on her buttocks on the ground, approximately one to two feet away from the desk. PO Desilva was standing to one side of § 87(2)(b) with his arm underneath her shoulder, attempting to lift her to her feet. Sgt. Phillip was behind the desk. PO Pierre-Louis observed § 87(2)(b) seated inside the main room of the stationhouse. The desk was visible from his location. § 87(2)(b) moved her shoulders back and forth to resist being lifted. PO Pierre-Louis approached § 87(2)(b) and assisted in lifting her, and bringing her to the holding cells. PO Pierre-Louis did not see any injuries to § 87(2)(b) including to her face. Neither § 87(2)(b) nor any officer made statements regarding a taser.

PO Pierre-Louis performed five minutes of cell-attendant duty, from 4:45 a.m., until 4:50 a.m. He observed § 87(2)(b) in the cells during this time, but did not observe any injuries to her. PO Pierre-Louis never learned of the events which transpired prior to his arrival.

Other officers Interviewed

PO Louis Nunes was also interviewed (encl. D28 – D31) for this case, but had no participation in or knowledge of the incident. PAA Pryor was also interviewed (encl. D32 – D33), but denied any recollection or knowledge of this incident.

Medical Records

§ 87(2)(b) arrived in the § 87(2)(b) (encl. E1 and Medical Records) on § 87(2)(b) complaining of left-sided mid-back pain, left-sided forehead pain, pain to both wrists, and a headache. She rated her pain a five out of ten. She stated to § 87(2)(b) that she was hit with a knee in the forehead while being arrested and was simultaneously tasered in the left side of the back and handcuffed. A physical exam revealed mild swelling at the left frontal scalp with tenderness upon palpation. There were also superficial abrasions to the left mid-back, and contusions to both wrists. A CT scan of the head revealed no evidence of intracranial trauma resulting from this incident. § 87(2)(b) was provided with medication for the pain to her head and back. § 87(2)(b) was diagnosed with contusions to her wrist, face, scalp, neck and back. She was instructed to use ice packs as well as over the counter pain killers to manage her injuries.

NYPD Documents

Police Communications Recording (encl. F1)
00:01: 69th Precinct desk sergeant calls in a pickup of a dispute in front of the 69th Precinct

stationhouse, located at 9720 Foster Avenue in Brooklyn.

04:40: 69th Precinct desk radios an arrest at the stationhouse. There is indistinct yelling in the background. This dispatcher states that the arrest time is 4:18 a.m.

Event Information and Chronology

According to the chronology (encl. F2) for event number D13070902632, an event was created at 4:15 a.m. when unit 69ST2 called in a pickup of a dispute outside of 9720 Foster Avenue in Brooklyn. At 4:19 a.m., unit 69ST2, who identified himself as the 69th Precinct desk sergeant, called in an arrest at the location. The event was closed at 7:39 a.m. with no further action taken. The event information sheet (encl. F4) adds no further details.

Roll Call

According to the 69th Precinct roll call from tour 1 on July 9, 2013 (encl. F27 – F31), Sgt. Phillip was the desk sergeant, PO Desilva was the cell attendant, PO Nunes was assigned to stationhouse security, and PO Pierre-Louis was the telephone switchboard operator. The stationhouse clerk was PAA Pryor. The roll call notes that a taser was taken on patrol by the patrol supervisor, Sgt. Santana. The number is not noted. No taser is listed next to Sgt. Phillip's name.

Command Log

According to the 69th Precinct command log (encl. F14 – F26) on July 9, 2013, § 87(2)(b) was arrested at the 69th Precinct stationhouse at 4:18 a.m. by PO Desilva for § 87(2)(b), § 87(2)(a) CPL § 87(2)(b). Sgt. Phillip supervised the arrest. § 87(2)(b) is noted as being in apparently good physical condition. Her funds are listed as \$52.11. \$41.00 was returned to her. § 87(2)(b) was released from the precinct at 1:05 p.m. There is a note which states, "DP log number § 87(2)(b), ADA Savage." There are no entries in the command log regarding the use of a taser. No tasers are listed as being assigned to sergeants at the beginning of the tour.

Det. Richard and Det. Moral ended their tours at 4:08 a.m. No other officers entered or left the stationhouse around the time of the incident.

Medical Treatment of Prisoner Form

The medical treatment of prisoner form (encl. F11) pertaining to § 87(2)(b)'s arrest states that § 87(2)(b) reported that her head, hand and left wrist felt swollen. § 87(2)(b) refused medical treatment at the stationhouse. The boxes for "medical treatment required/requested" and "medical treatment refused" are both checked "No." On the bottom of the form, the boxes for refusing treatment in the field and at the command are checked "Yes." No EMS response is noted.

Property Vouchers

Invoice number § 87(2)(b) (encl. F12 – F13), pertaining to § 87(2)(b)'s arrest, contains the following property: 1 white iPad, 1 black Samsung phone battery, 1 black Samsung cell phone, 1 white pair of headphones and 1 black phone charger.

Prisoner Holding Pen Roster

According to the 69th Precinct prisoner holding pen roster (encl. F32) from July 9, 2013, § 87(2)(b) was placed in the holding cell at 4:18 a.m. She was released a 1:05 p.m. There is a note which reads "Arrest, DP log number § 87(2)(b)." PO Pierre-Louis was the officer guarding § 87(2)(b).

Declined Prosecution Log

Declined Prosecution Log number § 87(2)(b) (encl. F33 – F34) contains the same basic facts provided by PO Desilva to the CCRB. § 87(2)(b) was ordered released due to insufficient evidence to prosecute. § 87(2)(b), § 87(2)(a) CPL 160.50
§ 87(2)(b)

Other Documents

As per Lt. Cappello of the NYPD Legal Bureau, Document Production Unit, § 87(2)(b)'s arrest photo has been deleted from the police department databases.

Other Evidence

No Non-Lethal Restraining Device Report was prepared for this incident (encl. K21). On December 3, 2013, the investigator spoke to PO Warren Auty (encl. I8) of the Firearms and Tactics Section. PO Auty indicated that Sgt. Phillip was promoted to the rank of sergeant on December 14, 2012. He affirmed that there is no record of Sgt. Phillip using a taser against a civilian since that date. As of April 4, 2014, a request for Sgt. Phillip's taser-use history is pending from the office of the Deputy Commissioner, Training. It will be added to the case file upon receipt.

Arrest for Incident and Disposition

- All criminal charges in connection with the incident on July 9, 2013 have been dismissed. § 87(2)(b)'s charges were dropped on the night of the incident by ADA Savage of the Kings County District Attorney's office (encl. H1).

Status of Civil Proceedings

- On July 23, 2013, § 87(2)(b) filed a Notice of Claim (encl. G3 – G4) with the office of the New York City Comptroller. She sought respite in the amount of one million dollars for damages, including unlawful and false imprisonment, torture, physical pain, loss of future income and emotional distress. § 87(2)(b) provided a 50H deposition on November 8, 2013, and as of March 24, 2014, her case is pending.

Civilian Criminal History

- As of March 24, 2014, Office of Court Administration records reveal no criminal convictions for § 87(2)(b). Her arrest record reveals only the arrest corresponding to this incident (encl. H2 – H8).

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. B2).

Subject Officer CCRB History

- In Sgt. Phillip's eight years as a member of the service, the CCRB has not substantiated any allegations against him (encl. B1).

Conclusion

Identification of Subject Officers

Both § 87(2)(b) and PO Desilva stated that Sgt. Phillip referred to § 87(2)(b) as a "bitch," and tasered her. § 87(2)(b) stated that Sgt. Phillip struck her in the face with his knee, while PO Desilva stated that he did so with his fist. Sgt. Phillip acknowledged participating in § 87(2)(b).

§ 87(2)(b)'s arrest and admitted holding a taser in his hand. Allegations A through D are therefore pleaded against Sgt. Phillip.

Investigative Findings and Recommendations

• Allegation A) Force: Sgt. Orlando Phillip used physical force against § 87(2)(b)

It is undisputed that when PO Desilva presented her to the desk inside the 69th Precinct stationhouse, § 87(2)(b) was yelling, removed her hand from a handcuff, and was then placed on the ground.

§ 87(2)(b) stated that when PO Desilva placed her on the ground, she landed on her back and moved her body to free her hand, which was trapped underneath her. Sgt. Phillip stated that § 87(2)(b) kicked her legs and screamed while on the ground. PO Desilva testified that § 87(2)(b) rolled from side to side while face-down, kicked her legs and attempted to flail her arms and bring them underneath her body. She was unable to do so, however, because he and PO Mercedes were controlling her arms. § 87(2)(b) stated that Sgt. Phillip subsequently lifted her from the ground and kneeled her three times in the face. Sgt. Phillip "doubted" that he used his knee to strike § 87(2)(b) but could not recall. PO Mercedes denied that any officer struck § 87(2)(b). PO Desilva testified that Sgt. Phillip knelt down and punched § 87(2)(b) twice on the right cheek. He later observed swelling to this area, and § 87(2)(b) complained of pain. § 87(2)(b) and PO Desilva denied that § 87(2)(b) struck her head or sustained any injuries when PO Desilva placed her on the ground. § 87(2)(b)'s medical records document mild swelling to the front, left portion of her scalp as well as a contusion to her face.

§ 87(2)(g)
§ 87(2)(b) according to PO Desilva Sgt. Phillip knelt beside § 87(2)(b) to strike her. The proximity of Sgt. Phillip's knee to § 87(2)(b)'s head may explain the discrepancy between § 87(2)(b) and PO Desilva's testimony. PO Mercedes denied that § 87(2)(b) was struck at any point. However, his testimony is discredited by his blanket denial of other well-established facts in the case, such as that Sgt. Phillip at some point possessed a taser when approaching § 87(2)(b). § 87(2)(b)'s medical records document an injury to her face, consistent with a punch. These conditions are sufficient to establish that Sgt. Phillip struck § 87(2)(b) at least twice in the face.

Patrol Guide procedure 203-11 (encl. A1 –A2) mandates that officers use the minimum amount of force necessary to take a subject into custody.

PO Desilva and PO Mercedes affirmed that § 87(2)(b)'s primary form of resistance was refusing to surrender her hands to be handcuffed. PO Desilva further testified that he and PO Mercedes had control of § 87(2)(b)'s arms, but had difficulty bringing them together to handcuff her. They were able to maintain her face-down on the ground. While PO Desilva stated that § 87(2)(b) swung her hand towards his face upon removing it from handcuffs, he denied that she struck him. Sgt. Phillip himself stated that § 87(2)(b)'s resistance, once on the floor, consisted only of kicking and screaming, presumably from a face-down position. Neither PO Desilva nor PO Mercedes's account of the struggle suggests that § 87(2)(b) was out of the officers' control or that her resistance at any point posed an overt threat to their safety. § 87(2)(g)
§ 87(2)(b) there is no evidence that § 87(2)(b) at any point exhibited any violence towards Sgt. Phillip, § 87(2)(g)

§ 87(2)(g)
§ 87(2)(b)

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

PO Desilva further testified that Sgt. Phillip was very angry, and argued with § 87(2)(b) inside the stationhouse, prior to her removing her hand from handcuffs. In addition, the strikes to § 87(2)(b) s face were coupled with Sgt. Phillip's use of the term "crazy bitch" towards § 87(2)(b)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

- **Allegation B) Offensive Language: Sgt. Orlando Phillip made remarks to § 87(2)(b) based upon gender.**

§ 87(2)(b) alleged that Sgt. Phillip stated "This bitch," in reference to her as he came from behind the desk to assist PO Desilva. PO Desilva stated that Sgt. Phillip stated, "You're a crazy bitch," in reference to § 87(2)(b) immediately after striking her twice in the face. Sgt. Phillip did not recall referring to § 87(2)(b) as such, and PO Mercedes testified that no officer did so.

§ 87(2)(g)

[REDACTED]

[REDACTED]

Patrol Guide procedure 203-10 (encl. A3 – A3b) prohibits officers from making disrespectful or discourteous remarks based on another person's gender.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g)

[REDACTED]

[REDACTED]

§ 87(2)(g)

[REDACTED]

[REDACTED]

- **Allegation C) Force: Sgt. Orlando Phillip tasered § 87(2)(b)**
- **Allegation D) Abuse of Authority: Sgt. Orlando Phillip did obtain medical treatment for § 87(2)(b)**
- **§ 87(4-b), § 87(2)(g)**

§ 87(2)(b) alleged that Sgt. Phillip discharged a taser into her back one time by placing the body of the taser directly against her back and activating it. PO Desilva corroborated this claim. He

also noted the use of the taser in his memo book entry, ostensibly made immediately after the incident. Sgt. Phillip acknowledged carrying a taser in his hand to where § 87(2)(b) was on the ground, but stated he subsequently placed the taser in his waistband, and effected the arrest with his hands alone. He later stated he did not recall whether the taser touched § 87(2)(b)'s body, or whether he used it to restrain her. He did "not believe" he activated the taser at any point while apprehending § 87(2)(b). PO Mercedes and § 87(2)(b) both denied that Sgt. Phillip ever possessed a taser, or used one to restrain § 87(2)(b). Photographs provided by § 87(2)(b) document abrasions and deep bruising to her lower left back (encl. C16 – C17). PO Desilva acknowledged observing these injuries on the night of the incident. It is undisputed that § 87(2)(b) refused medical attention, and no ambulance was called to the stationhouse. No steps were taken by Sgt. Phillip to report or document the use of a taser against § 87(2)(b).

Both § 87(2)(b) and PO Desilva testified that Sgt. Phillip tasered § 87(2)(b) by touching the body of the taser directly to her back without discharging darts. § 87(2)(g)

§ 87(2)(b) As noted in Patrol Guide series 212, interim order 20 (encl. A4 – A11), the use of a taser in touch-stun mode is atypical and is only to be used in exceptional circumstances. § 87(2)(g)

§ 87(2)(b) Additionally, Sgt. Phillip was unable to clearly account for what actions he took while in possession of the taser.

Patrol Guide Series 212, interim order 20 (encl. A4 – A11), pertaining to the use of taser devices, requires officers to consider the totality of the circumstances in determining the minimum amount of force necessary. Factors to consider include disparities in age, size or strength between the officer and subject, the subject's violent history and willingness to actively physically resist, any immediate threat to the subject or officers, a hostile environment, and the use of stimulants or narcotics by the subject, which could affect pain tolerance and violence. An appropriate warning is to be given prior to discharge. Whenever a subject receives a taser discharge, including in touch-stun mode, EMS is to be requested to the scene, and the subject must be examined at a medical facility. All uses of the taser must be documented in the officer's memo book or command log, and that officer's supervisor must be notified. In the case of a touch-stun, the commanding officer or duty captain must be notified and perform an investigation. The investigating supervisor will prepare a Less-Lethal Equipment Use Report, and register it with the Firearms and Tactics Section.

PO Desilva and PO Mercedes testified that § 87(2)(b)'s resistance inside the stationhouse consisted of attempting to place her hands underneath her body, and refusing to surrender them to the officers. § 87(2)(g) PO Desilva further stated that he had § 87(2)(b)'s arms throughout the struggle, and was able to maintain her in a face-down position. § 87(2)(g)

§ 87(2)(b) The apprehension took place in the safety of a precinct stationhouse, where three male officers, all substantially larger than § 87(2)(b), actively participated in subduing her. In addition, at least two other officers were available in other areas of the building. Finally, PO Mercedes and Sgt. Phillip both asserted that despite § 87(2)(b)'s noncompliance, she was eventually controlled without the assistance of a taser or any other device. According to PO Desilva, Sgt. Phillip gave no warning before activating the taser. Sgt. Phillip further stated he did not believe he would perform a touch stun on § 87(2)(b). § 87(2)(g)

As the desk sergeant, and officer who discharged a taser against § 87(2)(b) Sgt. Phillip was responsible for obtaining medical treatment for her, regardless of her refusal as the patrol guide mandates that the subject of a taser discharge be examined at a medical facility, and for documenting the use of the taser in the command log. It is undisputed that no ambulance was called for § 87(2)(b). Neither the command log, nor Sgt. Phillip's memo book documents that a taser was used against § 87(2)(b) and no report of the taser's use was filed with the Firearms and Tactics Section. Sgt. Phillip verbalized his understanding of his reporting responsibilities after discharging a taser in touch-stun mode, and made no mention of notifying a duty captain,

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- **Allegation F) Other Misconduct: Sgt. Orlando Phillip provided a false official statement to the CCRB in violation of Patrol Guide procedure 203-08.**

§ 87(2)(g)

[REDACTED]

Sgt. Phillip stated that he "doubted" that he struck § 87(2)(b) in the face with his knee, did not recall using profanity towards her and stated he "did not believe" that he tasered her.

Patrol Guide procedure 203-08 (encl. A12) states that providing a false official statement during the course of an official CCRB interview is prohibited, absent exceptional circumstances.

Sgt. Phillip's statement that he "did not believe" he activated a taser near § 87(2)(b) approaches an overt denial of the allegation. However, his repeated assertions that he did not recall whether he used a taser or whether he referred to § 87(2)(b) as a "bitch," § 87(2)(g)

Sgt. Phillip was interviewed less than four months after the incident, which occurred inside the precinct stationhouse in the early morning hours of a tour during which he took no other police action against a civilian. He recalled numerous other details of the incident, including the fact that he possessed a taser and that he placed it in his waistband prior to apprehending § 87(2)(b). PO Desilva testified that Sgt. Phillip held the taser in contact with § 87(2)(b) for several seconds, § 87(2)(g) § 87(2)(g)

Sgt. Phillip had never discharged a taser against a civilian since being promoted to the rank of sergeant seven months prior to the incident. § 87(2)(g)

§ 87(2)(g)



Team: 4

Investigator: _____ Andrew Guinan _____ 4/4/2014
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date



POLICE DEPARTMENT CITY OF NEW YORK

December 10, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Orlando Phillip
Tax Registry No. 940092
Patrol Borough Brooklyn South
Disciplinary Case No. 2014-12534

Charges and Specifications:

1. Said Sergeant Orlando Phillip, on or about July 9, 2013 at approximately 0410 hours, while assigned to the 69th Precinct and on duty, at the 69th Precinct located at 9720 Foster Avenue, Kings County, used offensive language in that he made a discourteous and disrespectful remark regarding Rebecca Gordon's gender by calling her, in sum and substance, a bitch.
P.G. 203-10, Page 1, Paragraph 1 - PUBLIC CONTACT- PROHIBITED CONDUCT
2. Said Sergeant Orlando Phillip, on or about July 9, 2013 at approximately 0410 hours, while assigned to the 69th Precinct and on duty, at the 69th Precinct located at 9720 Foster Avenue, Kings County, did wrongfully use force against Rebecca Gordon, in that he unlawfully used a Taser against Rebecca Gordon.
P.G. 203-11 - USE OF FORCE
3. Said Sergeant Orlando Phillip, on or about July 9, 2013 at approximately 0410 hours, while assigned to the 69th Precinct and on duty, at the 69th Precinct located at 9720 Foster Avenue, Kings County, did wrongfully use a conducted energy device against Rebecca Gordon, in that he unlawfully used a Taser against Rebecca Gordon.
P.G. 212 - USE OF CONDUCTED ENERGY DEVICE
4. Said Sergeant Orlando Phillip, on or about July 9, 2013 at approximately 0410 hours, while assigned to the 69th Precinct and on duty, at the 69th Precinct located at 9720 Foster Avenue, Kings County, abused his authority as a member of the New York City Police Department, in that he failed to obtain medical treatment for Rebecca Gordon.
P.G. 210-04, Page 2, Paragraph 5 - MEDICAL TREATMENT OF PRISONER

Appearances:

For CCRB-Administrative Prosecution Unit: Nicole Junior, Esq.
For Respondent: John D' Alessandro, Esq.

Date of Hearing(s):
June 1 and August 26, 2015

Decision:
Guilty

Trial Commissioner:
DCT Rosemarie Maldonado

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 1 and August 26, 2015. Respondent through his counsel, entered a plea of Not Guilty to the subject charges. CCRB called Rebecca Gordon and Police Officer Lawrence DeSilva as witnesses. Respondent testified on his own behalf and offered the transcript and recording of Person A CCRB interview. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty of the charged misconduct.

FINDING AND ANALYSIS

The following is a summary of the facts that are not in dispute. On or about the time at issue in this case, Rebecca Gordon was a 22 years old student at Medgar Evers College. She was 5'5" and weighed approximately 130 pounds. At 2000 hours on the evening of July 8, 2013, she went out for a late dinner with friends and fellow interns. She stayed out for approximately seven and a half hours and consumed alcohol that night. At 0330 hours the next morning, she called a taxi dispatch service for transportation to

her residence. Once the cab arrived, the driver, Person A, quoted her a fare which Gordon believed to be higher than what had been cited by the taxi dispatcher. After arguing about the fare she asked to be taken to an ATM machine to withdraw money. The driver made a quick stop at an ATM and continued to Gordon's residence. (Tr. 13-17) (See also Respondent's Exs. A, B)

The fare dispute continued and at some point during their interaction the driver took Gordon's cell phone. The driver did not return the phone and Gordon refused to pay the fare that the driver demanded. When they failed to reach an agreement, the driver drove to the 69 Precinct to request police assistance. That evening, Respondent was the 69 Precinct desk officer and Police Officer Lawrence DeSilva was the telephone switchboard operator. They were both in the vicinity of the precinct's main entrance when they heard a commotion coming from the driver's cab. (Tr. 17-22, 52, 60, 61, 107)

Both Respondent and DeSilva intervened to resolve the fare dispute and the dispatcher was called to confirm the appropriate fare. Respondent made a decision to

[REDACTED] Gordon was eventually handcuffed and escorted into the precinct. While inside, she "pulled" one of her hands out of the handcuffs. DeSilva immediately took her face down to the ground. (Tr. 23-27, 57-58, 67, 73, 107)

[REDACTED]
[REDACTED] Gordon filed a claim against the Police Department which was settled for \$45,000. (Tr. 15, 79)

Specifications 1, 2 and 3

Specifications 1, 2 and 3 charge Respondent with courtesy and the wrongful use of a conducted energy device. At issue is whether calling Gordon a "bitch" and then stunning her with a conducted energy device constituted misconduct. Having considered the testimony, evidence and arguments put forth by the parties I find that, under these particular circumstances, the use of this pejorative language followed by the application of a conducted energy device was misconduct. What follows is a summary of the evidence presented by the parties which is relevant to the disputed facts.

At the hearing Gordon testified that after she called the dispatcher to resolve the fare dispute, the driver "snatched" her cell phone and "in the process" hit her face. The driver threatened not to return the cell phone until the higher fare was paid and then drove to the 69 Precinct. (Tr. 17, 18, 20, 22, 23)

Outside the precinct, Respondent first spoke to The driver while she remained seated in the cab. When approached, Gordon told DeSilva that she had been assaulted. She further explained that her intent was to pay the fare but insisted that her phone be returned first. Respondent asked her to step out of the cab and Gordon replied, "I was just like, not until I get my phone, like no...." Although she was not told that she was being arrested, the officers "slammed" her against the cab, pulled her arms behind her back, cuffed her and "pushed" her into the stationhouse. (Tr. 23, 34-36)

According to Gordon, while inside the precinct one of her hands was freed from the handcuffs. She explained, "I was speaking, and I was gesturing with my hand, sort of like the way people talk with their hands...the cuffs were rather loose...I pulled my hand out. It wasn't forcefully or anything like that." She recalled being immediately "dropped to the floor" by DeSilva and being handcuffed again by three officers. Gordon admitted

that it was "wrong" to pull out her hand and averred that she did not resist DeSilva's attempt to recuff her. It was at this point that Gordon heard Respondent yell "Oh this bitch" and observed him run toward her with a Taser in hand. Respondent then tased her with the conducted energy device causing injury to her lower back. Gordon claims that Respondent also used his knee to hit her three times in the face. (Tr. 18-22, 23-26, 39)

(See also CCRB Exs. 1, 2)

CCRB presented Officer DeSilva as a witness. According to this Officer, the fare dispute was investigated by talking to the parties and the dispatcher. Respondent and DeSilva determined that the cabbie's fare was correct and gave Gordon numerous opportunities to resolve the matter by paying the requested fare. Instead, she became "uncooperative", "physically resist[ant]" and "irate," and refused to exit the cab when ordered to do so. As a result, DeSilva and an unnamed "Housing officer" were forced to physically remove her from the backseat. DeSilva testified that she continued "screaming" and "kicking" her feet inside of the [rear] seat of the cab, that she was "kicking her feet toward" him so that he would not "be able to take her out [of] the vehicle." After she was removed from the cab she began "flailing her arms" and "wiggling" and "pushing." With the help of the Housing officer he was able to forcibly pull her hands toward her back and the Housing officer was able to rear cuff her. It took two officers to complete this maneuver. (Tr. 54, 55, 59-61, 68, 72, 89)

DeSilva and the Housing officer escorted Gordon into the precinct. Respondent followed them inside and proceeded to the desk. According to DeSilva, Gordon and Respondent began "arguing" and "screaming." DeSilva could not remember what was said, but he believed Gordon was intoxicated. While DeSilva prepared the arrest

paperwork for Gordon, he noticed her hand “half way out [of] the cuffs.” DeSilva recounted that, “I reacted, she pulled her hand out [sic] the cuffs and tried to swing her [uncuffed] hands towards my face.” Although she didn’t actually strike his face, he was concerned for his safety because a loose handcuff can be used as a weapon. (Tr. 52, 58, 60, 61, 65-67, 83, 91)

DeSilva testified that he grabbed Gordon’s shoulder and “tactically put her on the floor.” He then kneeled on the midsection of her back to keep her chest down on the floor. Gordon continued to move her hands and feet despite the officer’s request that she cooperate. The Housing officer who was present continued to assist DeSilva while Respondent remained behind the desk. According to DeSilva, as they were attempting to recuff her Respondent came around the desk, kneeled next to Gordon, punched her twice in the face with a closed fist and said, “you’re a crazy bitch.” Respondent then “stood up,” “leaned” over the front desk, “grabbed a Taser” and administered one shot directly to Gordon’s back. Throughout, Gordon continued “screaming,” “yelling,” “crying” and making it difficult for DeSilva to handcuff her. Eventually, Gordon complied. DeSilva was aware that Gordon was injured, and saw the marks on her lower back. (Tr. 68-72, 74-76, 77, 78, 92, 94-95, 97, 101, 103)

At the hearing Respondent testified that he heard “a lot of screaming” in front of the precinct and asked DeSilva to investigate. Because he believed DeSilva was alone, he stepped outside to assist. Contrary to DeSilva’s assertion, Respondent testified that there was no Housing officer at the scene. Once outside, he heard the cab driver say “she’s crazy” and “she hit me with her cell phone.” Gordon complained that the driver had her cell phone. Respondent attempted to resolve the fare dispute by speaking to the driver,

the taxi dispatcher and Gordon. They ascertained that Gordon was required to pay the requested fare and asked her to comply. When she refused, he decided to arrest her. Gordon began to scream and cry. According to Respondent, as he opened the cab door to remove her, Gordon kicked him in his leg. She then began “flailing her arms [and] punching.” Respondent and Gordon fell to the ground during the struggle. Within minutes, they handcuffed Gordon and walked her into the precinct. (Tr. 107-110, 124)

According to Respondent, he proceeded to the desk to make the required command log entries relating to Gordon’s arrest. He explained that:

As I am making my entries, I can’t remember if I said anything to Ms. Gordon, I can’t remember if I was upset, I can’t remember -- because of the whole situation, I don’t recall if -- I can’t remember if -- if I did say excuse my French, my language -- the B-I-T-C-H word, if I did say that, not directly at Ms. Gordon, but in regards to the situation, that I was upset. (Tr. 110)

Respondent testified that he heard a “bang” and a “slap” and when he looked up, he no longer saw DeSilva or Gordon standing in front of the desk.¹ He immediately “grabbed” the Taser and ran to them. He observed Gordon and DeSilva on the floor and “went on the ground” in an attempt to assist. He explained that the cuff on Gordon’s wrist was a “dangerous instrument” that could be used to injure them. On cross-examination, Respondent added that Gordon’s “feet and hands [were] flopping.... Resisting.” (Tr. 110, 111, 121)

On direct-examination Respondent testified that he applied a pressure control hold technique to subdue Gordon. Specifically, he strategically placed a fist behind Gordon’s ear and exerted pressure with his thumb. (Tr. 113) On cross-examination, however, Respondent was undecided:

¹ Respondent was inconsistent with respect to whether he actually saw Gordon strike DeSilva. On cross examination he testified that he did not see Gordon strike DeSilva. He stated that he saw her swing her arms with his peripheral vision. During his CCRB interview on November 8, 2013, however, Respondent claimed that he observed Gordon strike DeSilva in the face with a closed fist. (Tr. 125-127)

- Q. ...It's your testimony Sergeant Phillip that when you first saw Ms. Gordon on the ground inside of the 69th Precinct that you applied that pressure control hold to behind her ear?
- A. Yeah, I think maybe – I think
- Q. It's a yes or no.
- A. – I did that.
- Q. It's a yes or no. You applied it behind her ear?
- A. I think I did that.
- Q. So you're not certain that you applied a pressure control hold?
- A. I might have; I might have not.... (Tr. 115-116)

Respondent also claimed that he did not recollect whether the Taser was discharged during this encounter. Respondent testified as follows on direct-examination:

...I know I had the Taser in my hand. I can't remember if it went off. I don't recall if it – if it did went off, did it touch her body? I don't know. I can't remember if I laid it down on the ground and – to try and put Ms. Gordon in cuffs, in custody, you know, but her actions – I mean, her actions was, she was a prisoner that was attempting to escape. That's what I thought, that, you know, she slipped out of her cuffs. Her next intention is she did hit well attempt to hit Officer DeSilva, and she wasn't going to stay in the precinct, she was going to run right out the door because she wanted to be – in that situation was she warranted to be tased, I – if it did? (Tr. 114)

Respondent told this tribunal that he was not aware that Gordon was injured during her arrest. (Tr. 114) He acknowledged being 6'3" and weighing at least 210 pounds at the time while Gordon was about 5'5" and weighing approximately 100 pounds. He believed that she was intoxicated that night. (Tr. 119, 120)

The Patrol Guide is controlling in this case. Section 203-11 imposes the standard to be followed when force is necessary to achieve legitimate police goals. It mandates that members of service "at the scene of a police incident" use the "minimum necessary force" and that they "employ non-lethal alternatives, as appropriate." Additionally, whenever it becomes "necessary to take a violent or resisting subject into custody,

responding officers should utilize appropriate tactics in a coordinated effort to overcome resistance.”

According to Patrol Guide Section 212-117, conducted energy devices are “classified as a less lethal device” which is “intended to augment and provide a greater margin of safety for officers who might otherwise be forced to physically subdue a dangerous subject.” As such, they “should only be used against persons who are actively physically resisting, exhibiting active physical aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present.” Patrol Guide Section 212-117(16) sets forth the following factors to be considered when determining whether the use of such a device is permissible:

- a. officer/subject size disparity
- b. officer/subject strength disparity
- c. officer/subject age disparity
- d. officer’s perception of the subject’s willingness to resist
- e. officer’s perception of the immediate threat to the subject, members of the service and bystanders
- f. suspect’s violent history, if known
- g. officer’s location is a hostile environment
- h. officer’s perception of the subject being under the influence of a stimulant/narcotic which would effect pain tolerance and violence.

This tribunal has held that police actions, including Patrol Guide violations, are punishable only if a member of service acted in a vindictive or retaliatory fashion, in bad faith or “with knowledge that he was acting improperly, acted without concern for the propriety of his actions, or acted without due and reasonable care that his actions be proper.” *McGinigle v. Town of Greenburgh*, 48 N.Y.2d 949, 951, 425 N.Y.S.2d 61, 62 (1979); *Disciplinary Case No. 2014-11562* (September 23, 2015) The wisdom of this policy is apparent. To penalize a uniformed member of service for taking vigorous police

action in situations where close legal choices must be made could incapacitate a substantial proportion of legitimate law enforcement efforts.

In this case, however, I find that the preponderance of the credible evidence established that Respondent acted in bad faith when he called Gordon a “crazy bitch” and then touch stunned her with a conducted energy device as her torso was pinned face down to the floor by two other officers. I base this finding, in large part, on Respondent’s lack of credibility as a witness, his implausible recollection of events and his failure to provide an adequate justification for the deployment of a Taser. It is this tribunal’s credibility finding that the testimony presented – including Respondent’s trial demeanor – seriously undercut any convincing argument that his conduct toward Gordon was both reasonable and motivated by good faith. Accordingly, I find that Respondent is guilty of the misconduct set forth in Specifications 1, 2 and 3.

From the outset I am compelled to state that this tribunal was especially troubled by Respondent’s disturbingly equivocal description of his actions that night. Not only was Respondent evasive, his failure to recollect material facts felt palpably contrived to evade liability. Foremost, I do not credit Respondent’s explanation: “...I know I had the Taser in my hand. I can’t remember if it went off. I don’t recall.” For the reasons set forth below, this assertion defies belief.

First, DeSilva - a witness with no demonstrated bias or interest in the outcome of this case – convinced this tribunal that Respondent purposely discharged the Taser. As set forth in more detail above, DeSilva was clear that after he and a Housing officer had already dropped Gordon face down onto the precinct floor, and he was kneeling on her back, Respondent came around the desk, punched Gordon twice in the face, said, “you’re

a crazy bitch," "grabbed a Taser" from the desk and administered one shot to Gordon's back. Second, the medical records in evidence, and the pictures of the injuries on Gordon's back, also support a finding that Respondent used the Taser on her.

Third, Respondent was in a position of authority that night. As the on-duty desk sergeant he was the person responsible for knowing the Patrol Guide procedures relating to conducted energy devices. It was his job to make an assessment and determine whether or not the conducted energy device assigned to the precinct should be used. Fourth, it was Respondent himself who purposely grabbed the Taser from its assigned location at the front desk and approached a prisoner with the device in his hand. Fifth, it was his responsibility to assess whether the Taser was deployed,² complete all required documentation of the event and make the required notifications for supervisory review.

(Patrol Guide Section 212-117)

Furthermore, the use of a Taser within a precinct is an unusual incident which warrants note and triggers internal investigations. It is reasonable to expect that such an event would stand out. Under these circumstances, it is highly unlikely that Respondent could have been, as he claimed, completely oblivious as to whether or not he touched stunned Gordon with the conducted energy device he carried in his hand.

Respondent's credibility as a witness was further marred by his testimony on the use of a pejorative phrase and his alleged use of a control technique. Respondent was cagey about whether he used the word "bitch" during this encounter. Again he testified that he could "not remember" whether he had used that word but added that "if he did" it was not directed at Gordon. Particularly disturbing, however, was how the contrived vagueness of his account with respect to the Taser was mirrored in his testimony

² It is important to note that all discharges are registered in the device's internal memory. (Patrol Guide Section 212-117, p. 3, Note)

concerning his alleged use of a "pressure control point technique."³ On direct-examination, Respondent testified that he applied a pressure control point technique in the area of Gordon's ear. However, as set forth in detail above, when CCRB asked whether he had used the technique he backtracked and answered, "I might have; I might have not."

This tribunal does not believe that this is a case where the "heat of battle" truly impacted a participant's ability to recollect certain details of a physical conflict. Instead, what Respondent's doubtful assertions revealed was an attempt to conceal his potential liability and his unwillingness to be accountable for his own acts. Both are clear indicia of untruthfulness and, in this particular case, a bad faith motivation.

I could not credit certain additional details provided by Respondent at trial. Based on DeSilva's straightforward testimony I find that there was a Housing officer on the scene who helped DeSilva physically remove Gordon from the cab and that Respondent did not do so. I likewise find that the Housing officer, and not Respondent, was the person who handcuffed Gordon as she leaned against the cab, and it was that officer who helped escort her inside the precinct and assisted DeSilva after Gordon removed a cuff and was pushed onto the precinct floor. Respondent's assertions to the contrary seemed to be designed for the sole purpose of embellishing the need for additional force.

Furthermore, Respondent failed to provide a reasonable justification for using a conducted energy device in this case. In fact, at one point during his testimony he seemed to imply that Gordon was handcuffed as a result of his alleged use of a pressure point hold which preceded the use of the Taser. (Tr. 112) In this respect, DeSilva's

³ This tribunal notes that any contact Respondent might have had with Gordon's head or face was not the subject of disciplinary charges.

testimony was not as probative. It is undisputed that DeSilva was still attempting to recuff Gordon, but his testimony made it difficult to gauge her level of resistance at the moment the Taser was deployed. According to DeSilva, Respondent punched Gordon in the face twice, called her a bitch, leaned over to get the Taser and deployed it. Although Gordon's hands and feet were moving, DeSilva conceded that he had tactically maneuvered her face down onto the floor and had stabilized her torso by placing his knee on the middle of her back. Within this context, Respondent's oblique and shifty testimony did not shed light on the reasonableness of this use of force.

In making these findings I note that Gordon herself was not a credible witness. Much like Respondent, she attempted to downplay her own culpability in this incident. It is also important to acknowledge that some force was certainly necessary to handcuff Gordon once she removed her hand from the handcuff. In fact, absent the evidence of bad faith, this might have been a close case. Respondent, however, was not credible and did not provide a reasonable basis for his act.

Given the totality of circumstances in this particular case, I find that Respondent was discourteous and used a conducted energy device in bad faith and in a manner that fell far short of Department expectations for a member of service in his rank. Accordingly, I find Respondent guilty of the misconduct set forth in Specifications 1, 2 and 3.

Specification 4

Respondent is charged with failing to obtain medical treatment for Gordon. It is undisputed that an ambulance was not called to the scene and Gordon did not receive

medical attention for the injuries she sustained as a result of the tase from the conducted energy device. (Tr. 114)

Patrol Guide 212-117 is controlling here. According to section 212-117 18(a), the authorized member of the service who uses a conducted energy device on a person: “Request[s] response of FDNY Emergency Medical Service (EMS), if person received a CED discharge. (a) Any person who has been struck by a CED dart or who has had a CED used on him or her in touch stun mode must be examined at a medical facility.”

Here, even if I were to credit Respondent’s testimony that he was unaware of any injuries that Gordon sustained, Respondent was nonetheless mandated by the Patrol Guide to request EMS to the scene. More importantly, Respondent used a “touch stun” mode on Gordon, and as such, she “must be examined at a medical facility.” Respondent did not follow the Patrol Guide’s clear protocol. Additionally, DeSilva credibly testified that he observed injuries on Gordon and prepared a medical treatment of prisoner form. CCRB also introduced medical records and photos consistent with these injuries. Accordingly, Respondent is found guilty of the misconduct set forth in Specification 4.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent’s service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 9, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of all four specifications. CCRB contends that the appropriate penalty is the forfeiture of 15 vacation days. I agree. Here, Respondent’s

testimony was untruthful and evasive and failed to convince this tribunal that he acted in good faith. Furthermore, Respondent's misconduct is further compounded by his use of a gender specific obscenity right before discharging the Taser and his failure to provide the prisoner with mandated medical care. Given these circumstances, the forfeiture of fifteen (15) vacation days is a reasonable penalty.

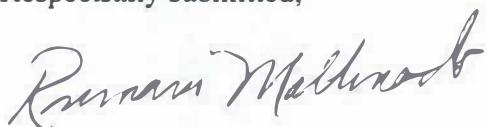
This penalty is consistent with penalties for similar offenses. For instance, in *Case No. 2013-10851* (February 27, 2015) an eight-year police officer with no prior disciplinary record forfeited ten vacation days for striking complainant with an asp in the head without police necessity after Respondent's partner had tackled him to the ground. See also, *Case No. 2009-1137* (January 17, 2012) Nine-year sergeant with no prior disciplinary record pleaded *Nolo Contendre* and forfeits five (5) vacation days for wrongfully using a taser on an individual without assessing the circumstances of the situation and determining if the use of the device was appropriate. See further, *Case Nos. 2014-12100 & 2014-12105* (September 10, 2015) where an eighteen-year and nine-year detective with no prior disciplinary record forfeit five vacation days each for failing to obtain medical treatment for a prisoner who was undoubtedly in need of medical attention. See also, *Case No. 2014-12026* (September 2, 2015) eleven-year sergeant with no prior disciplinary record forfeits five (5) vacation days for using discourteous language during a stop.

Respectfully submitted,

APPROVED

FEB 04 2016
William J. Bratton
POLICE COMMISSIONER

Rosemarie Maldonado
Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

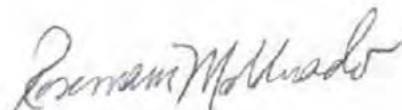
From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT ORLANDO PHILLIP
TAX REGISTRY NO. 940092
DISCIPLINARY CASE NO. 2014-12534

Respondent was appointed to the Department on January 9, 2006. His last three evaluations were as follows: he received an overall rating of 4.0 "Highly Competent" in 2015 and a 3.0 "Competent" in 2014 and 2013. [REDACTED]

[REDACTED]. Respondent has no medals.

He has no prior formal disciplinary record.

For your consideration.

A handwritten signature in black ink, appearing to read "Rosemarie Maldonado".

Rosemarie Maldonado
Deputy Commissioner Trials